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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,099	12/02/2003	Badari Kakumani	50325-0839	4394
29989 7590 10/05/2007 HICKMAN PALERMO TRUONG & BECKER, LLP 2055 GATEWAY PLACE SUITE 550 SAN JOSE, CA 95110			EXAMINER NGUYEN, PHILLIP H	
			ART UNIT 2191	PAPER NUMBER
			MAIL DATE 10/05/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/727,099

Applicant(s)

KAKUMANI ET AL.

Examiner

Phillip H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-53 and 58-64 is/are pending in the application.
- 4a) Of the above claim(s) 1-33 and 54-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34, 35, 39-53, 58, 59, 63 and 64 is/are rejected.
- 7) ☒ Claim(s) 36-38 and 60-62 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20070920, 20070806</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the amendment filed 7/11/2007.
2. Claims 1-33 and 54-57 have been canceled.
3. Claims 34, 38, 40, 43-44, 46-47, 49-50, 52-53 and 62-63 have been amended.
4. Claims 34-53 and 58-64 remain pending and have been considered below.

Response to Amendment

Note

5. Applicant appears to be attempting to invoke 35 U.S.C. 112 sixth paragraph in claims 52 and 46 by using "means-plus-function" language. However, examiner notes that the only means for performing simulating in the specification appears to be software. Since no other specific structural limitations are disclosed in the specification, the claims have not invoked 35 U.S.C. 112 sixth paragraph when considered below.

Allowable Subject Matter

6. Claims 36-38 and 60-62 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 34, 52, 53 recite the limitation "simulating, using a software update simulator on a computer system" in the body of the claim. This limitation is ambiguous because it is unclear to examiner whether the "simulator" is on the computer system as recited in the preamble or a different one.

Claim Rejections - 35 USC § 101

9. The amendment filed 7/11/2007 has not overcome the rejection to claims 49-51 and 53 of previous action. Therefore, examiner maintains the rejection. The applicant's specification clearly indicate that the computer-readable medium is intended to cover signals (see paragraph [0210-0211]).

Response to Arguments

10. Applicant's arguments with respect to claims 34-64 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 43, 44, 46, 47, 49, 50 and 63 are rejected under 35 U.S.C. 102(b) as being anticipated by Baker (United States Patent No.: US 7,240,336 B1).

As per claims 43, 46, 49 and 63:

Baker further discloses:

- executing a software update simulator on said computer system (see at least col. 6, lines 56-59 "***The interpretative simulation process begins by setting up on the simulation computer 200 an environment that mimics the target computer 120a as described above and illustrated in FIG 1***");
- wherein said software update simulator runs software components normally run on a master node in the network of nodes (see at least col. 6, lines 56-59 "***The interpretative simulation process begins by setting up on the simulation computer 200 an environment that mimics the target computer 120a as described above and illustrated in FIG 1***");
- receiving a current software configuration of a node into said software update simulator by receiving current software module installed on said node (see at least col. 6, lines 59-60 "***The simulation computer has access to all of the file servers 100a-100h in the download. A diskette 210 is placed into the floppy***

drive of the simulation computer 200. The diskette contains an electronic traveler similar to the electronic traveler on the target computer.”);

- receiving a request for a simulation of a software update by receiving an update software image into said simulator (see at least col. 6, lines 59-60 “***The simulation computer has access to all of the file servers 100a-100h in the download. A diskette 210 is placed into the floppy drive of the simulation computer 200. The diskette contains an electronic traveler similar to the electronic traveler on the target computer.”);***);
- wherein the software image contains a set of one or more software packages (see at least col. 4, lines 12-15 “***This information includes batch files, scripts and application software. The application software can be either compressed or uncompressed***”);
- wherein each software package of the set contains at least one software module with corresponding software dependency information (see at least col. 4, lines 12-15 “***This information includes batch files, scripts and application software. The application software can be either compressed or uncompressed***”);
- wherein said software update simulator calculates the software update’s impact on said node using a current software configuration of said node (see at least col. 3, lines 10-12 “***The invention creates, in a lab environment, a simulation of the software installation on the target computers for any specific combination of model and factory installed options. The testing***”);

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environment is used to predetermine errors or problems that may occur in the download process"); and

- displaying the calculation's results to a user (see at least col. 8, lines 66-67 – col. 9, line 1 "***The simulation determines error reporting integrity. As each program is called, certain error information like return codes or error files can be created***").

As per claims 44, 47 and 50:

Baker further discloses:

- receiving at said software update simulator the type of node being analyzed (see at least col. 7, lines 1-10 "***...identifies what type model or computer is being loaded with software...***").

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 34, 35, 39-42, 45, 48, 51-53, 58, 59 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker (United States Patent No.: US 7,240,336 B1).

As per claims 34, 52, 53 and 58:

Baker discloses:

- simulating, using a software update simulator on a computer system, processes from at least one node of the networked nodes (see at least col. 6, lines 56-59 ***"The interpretative simulation process begins by setting up on the simulation computer 200 an environment that mimics the target computer 120a as described above and illustrated in FIG 1"***);
- wherein each simulated process is a minimal version of a functional process that runs on said node (see at least col. 6, lines 56-59 ***"The interpretative simulation process begins by setting up on the simulation computer 200 an environment that mimics the target computer 120a as described above and illustrated in FIG 1"***);
- receiving a software update for said node by said software update simulator (see at least col. 6, lines 59-60 ***"The simulation computer has access to all of the file servers 100a-100h in the download"***);
- wherein the software update contain a set of one or more software packages (see at least col. 4, lines 14-15 ***"The application software can be either in a compressed or uncompressed format"*** – the software application in compressed format is considered as package);
- wherein each software package of the set contains at least one software module with corresponding software dependency information (see at least col. 4, lines 12-15 ***"This information includes batch files, scripts and application***

software. The application software can be either compressed or uncompressed").

Baker does not explicitly disclose:

- wherein said software update simulator notifies a control process for said node that a software update is being requested; and
- wherein said software update simulator passes said control process identities of the set of one or more software packages to be updates and software dependency information.

However, official notice is taken that notifying a control process (target computer) that a software update is being requested and passing the control process (target computer) identities of software packages to be updated and software dependency information are well known to the updating/upgrading/patching/downloading techniques. One would have been motivated to modify Baker's approach to perform the known techniques to fulfill the purpose of downloading software to the target computer after the software update has been requested.

As per claims 35 and 59:

Baker does not explicitly disclose:

- wherein said control process determines running functional node processes that will be affected by the software update using the software dependency information.

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However, official notice is taken that control process (target computer) determines running functional node processes that will be affected by the software update using the software dependency is well known to the updating/upgrading/patching/downloading technique. One would have been motivated to determine any running functional processes that will be affected by the software update using the software dependency to find out if the software update runs properly on the target computer before install on the target computer.

As per claim 39:

Baker further discloses:

- wherein a user initiates a software update by loading an image containing the software update into said software update simulator (see at least col. 6, lines 59-60 "***The simulation computer has access to all of the file servers 100a-100h in the download***" – This indicates that when the user request software download, the simulation computer access to all the files in the servers).

As per claim 40:

Baker further discloses:

- wherein the user indicates what nodes and which of the set of one or more software packages are to be updated (see at least col. 7, lines 1-10 "...***On the same line as this prefix is a token that identifies what type model or computer is being loaded with software. A token is an alphanumeric string***...")

that is used to uniquely identify a model or FIO (Factory Installed Option) to the download system.”).

As per claim 41:

Baker does not explicitly disclose:

- wherein a software package contains version information, dependency information, and other metadata information pertaining to software in the package.

However, Official notice is taken that a software package contains version information and metadata information are well known to the updating, upgrading, patching or downloading arts. One would have been motivated to include in the package version information and metadata information to identify the update software for updating/upgrading/patching/downloading purposes.

As per claim 42:

Baker does not explicitly disclose:

- wherein the metadata includes a list of application program interface (API) providers and consumers.

However, official notice is taken that the use of metadata includes a list of API providers and consumers are well known to the relevant art. One would have been motivated to use metadata to describe other data, such as API providers and consumers.

As per claims 45, 48, 51 and 64:

Baker does not explicitly disclose:

- wherein said software update is a software downgrade where modules are being removed.

However, official notice is taken that software update is a software downgrade where modules are being removed is well known to the art. One would have been motivated to remove modules that are downgrade such as old version to update with a newer version to fulfill the updating purposes.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip H. Nguyen whose telephone number is (571)


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270-1070. The examiner can normally be reached on Monday - Thursday 10:00 AM - 3:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PN
9/25/2007


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